United States Environmental Protection Agency

New England Office
www.epa.gov/ne
March 2006

Colleges and Universities

Spring 2006

The New SPCC Rule

How the New Provisions May Affect You

Introduction

This newsletter is intended to serve as a brief explanation of the New Spill Prevention, Control and Counter-measures (SPCC) Rule. On July 17, 2002, EPA issued a final rule amending the Oil Pollution Prevention regulation promulgated under the authority of the Federal Water Pollution Control Act (Clean Water Act). This rule addresses requirements for SPCC Plans and some provisions may also affect Facility Response Plans (FRPs). The new SPCC rule addresses these revisions and became effective August 16, 2002. The SPCC rule can be found in Title 40 of the Code of Federal Regulations (CFR), Part 112 (Oil Pollution Prevention).

"The impetus behind the final changes is manifold. First, the final changes stem from the need to clarify the language and organization of the rule."

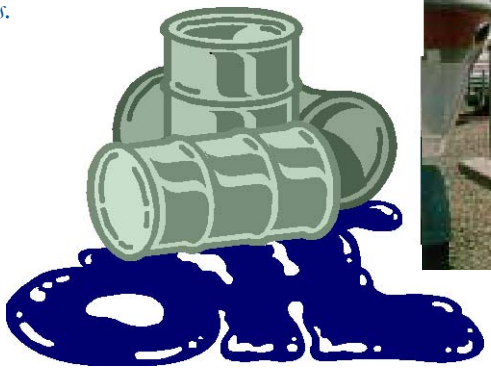
General Applicability

The current SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, use, process, refine, transfer, distribute, or consume oil and oil products. The revisions clarify the rules applicability to owners or operators that use oil. The revisions also allow for tracking the scope of the rule to conform with activity under the Outer Continental Shelf Lands Act or Deepwater Port Act, as well as waters affecting certain natural resources of the United States.

Background of the Oil Pollution Prevention Regulation

The goal of the oil pollution prevention regulation in 40 CFR Part 112 is to prevent oil discharges from reaching navigable waters of the United States or adjoining shorelines. The rule was also written to ensure effective responses to oil discharges. The rule further specifies that proactive, and not passive, measures be used to respond to oil discharges. The oil pollution regulation contains two major types of requirements: prevention requirements (SPCC rule) and facility response plan (FRP) requirements. The prevention requirements in Sections 112.1 through 112.7 were first promulgated in the 1973 SPCC regulation. Required under the rule is an SPCC Plan that contains measures to prevent and control oil spills, including those resulting from human operational error or equipment failures.

This issue is dedicated to providing you with an overview of the revisions that are effective with the passage of the new "Rules". For further information on this, please refer to Federal Register Volume 67, No. 137, July 17, 2002, Rules and Regulations.



To download the "Final Rule", go to:

http://www.epa.gov/oilspill

Which facilities need to have an SPCC Plan?

Your facility does if you:

store oil aboveground in any size tank(s) with a total aggregate volume over 1,320 gallons; or

store oil below ground in any size tank(s) with a total aggregate volume over 42,000 gallons; (USTs regulated under 40 CFR 280 and 281 are now SPCC exempt); and

could reasonably be expected to discharge oil to a "navigable water of the United States" or "adjoining shorelines" considering a possible worst-case scenario. (Think of the largest tank bursting during a heavy rain fall at 2 a.m. on a Sunday morning and not being discovered until the opening of work on Monday morning. How far from the facility could the oil have gone?)

What is the purpose of the Spill Prevention, Control, and Countermeasure Plan?

To develop procedures and methods to prevent the discharge of oil from a facility into the navigable waters or adjoining shorelines. A key part of the plan is a requirement that your facility have adequate secondary containment, such as berms and dikes around oil tanks.

Essentials of an SPCC Plan

Each SPCC plan, while unique to the facility it covers, must include certain elements. To ensure that facilities comply with the spill prevention regulations, EPA periodically conducts on-site facility inspections. EPA also requires that facilities submit their SPCC plans to EPA for review after having either 2 discharges (over 42 gallons each) in any 12-month period, or one spill over 1,000 gallons.

An SPCC Plan should include the following information and should follow the sequence outlined below:

A tank integrity testing schedule for all ASTs and USTs;

A prediction of the direction, rate of flow, and total quantity of oil that could be discharged where experience indicates a potential for equipment failure;

A description of containment and/or diversionary structures or equipment to prevent discharged oil from reaching navigable waters; (For on-shore facilities, one of the following should be used as a minimum: dikes, berms, or retaining walls; curbing; culverting, gutters, or other drainage systems; weirs, booms, or other barriers; spill diversion ponds; retention ponds; sorbent materials);

A complete discussion of the spill prevention and control measures applicable to the facility and/or its operations;

Where containment and/or diversionary structures or equipment are not practical, a strong oil spill contingency plan and a written commitment of manpower, equipment, and materials to quickly control and remove spilled oil;

Notification list: Name and phone numbers of in-house management, remote management, fire and police; municipal, state and federal agencies requiring notification;

Facility security (e.g., fencing; lighting) for prevention of internal sabotage, external vandalism; and

Employee training for spill prevention, oil handling, and spill clean-up (if applicable).

Professional Engineers (PE):

. An owner or operator of a facility is required to secure the certification of a PE on an SPCC Plan, and on technical amendments to the Plan.

. It is unnecessary that the PE be registered or licensed in the State in which the facility is located .

. The PE can be an employee of the facility.

. The PE attests that the procedures for required inspections and testing have been established, and the Plan is adequate for the facility.

. The PE does not have to conduct site visit, however, site visit should be performed by someone under the PE's employ such as an engineering technician, technologist, graduate engineer, or other qualified person to prepare preliminary reports, studies, and evaluations after visiting the site. Then the PE could legitimately certify the Plan. The PE will have to devise appropriate inspection and testing standards based on the facility's unique characteristics.

Major Rule Changes

Exemptions

- **Completely buried storage tanks**: The rule exempts completely buried tanks that are subject to all of the technical requirements of the UST regulations (40 CFR Parts 280 or 281);

- **Wastewater Treatment Facilities**: The rule exempts any facility or part thereof used exclusively for oily wastewater treatment, and not engaged in any Part 112 triggering activities, such as storing, transferring, or consuming oil. Storage of oil in drums or tanks for heating, vehicle fueling, etc., is not exempt from SPCC requirements;

- **Minimum Container Size of 55-Gallons**: The rule establishes a de minimis container size of 55 gallons;

- **Miscellaneous**: This rule exempts permanently closed tanks, Minerals Management Service facilities.

Regulatory Threshold: The rule raised the aboveground storage capacity threshold by eliminating the 660 gallon/single container criterion, creating a greater than 1,320 gallon threshold.

EPA Discharge Information: Revises the trigger for submitting information on spills at SPCC regulated facilities to EPA. Facilities are now required to submit revised SPCC plans after having 2 discharges (over 42 gallons each) in any 12-month period, or a single spill over 1,000 gallons.

SPCC Plan Preparation: Regional Administrators may require preparation of an SPCC Plan for otherwise exempt facilities on a case-by-case basis, where necessary to carry out the purposes of the CWA.

Alternative Formats for SPCC Plans: An owner or operator may use an Integrated Contingency Plan (ICP) or a State SPCC Plan or any other format acceptable to the Regional Administrator that meets Part 112 requirements. If the owner or operator does not follow the sequence specified by the rule, he must provide a cross-reference.

Technical Waivers: Allows deviations from most rule provisions (with the exception of secondary containment requirements) when equivalent environmental protection is provided.

Documentation Review: Owners and operators are now required to review their SPCC Plans every 5 years; no longer every 3 years.

Business Records: Allows, but does not require, an owner or operator to use "usual and customary" business records (including NPDES storm water bypass records) to satisfy record-keeping requirements.

Employee Training: Training requirements are limited to oil-handling employees. We specify some subjects that must be included. Discharge prevention briefings for oil handling employees are now required at least once a year.

"The SPCC revisions will reduce the regulatory burden by approximately 40 percent."

Facility Response Plan Considerations

The revisions to the SPCC rule may affect whether you need to prepare and maintain a Facility Response Plan (FRP) or how you calculate worst case discharge planning levels. In some cases, your facility may not meet the storage capacity thresholds for the substantial harm criteria. In other cases, you must have an FRP, but you may be able to revise the calculations for worst case discharge planning levels. The definitions used in part 112.2 also clarify terms used in the FRP rule. According to the new rule, the regulation no longer applies to the following:

Completely buried tanks that are subject to all UST technical requirements in 40 CFR parts 280 and 281;
Containers with a storage capacity of less than 55 gallons; and
Portions of certain facilities used exclusively for wastewater treatment.

Highlights of Final Rule

Exempts completely buried storage tanks subject to all of the technical requirements of the UST regulations (40 CFR Parts 280 or 281);

Exempts portions of certain facilities or any facility used exclusively for wastewater treatment or associated with oil production. This exemption does not apply to production, recycling, or recovery of oil;

Establishes a de minimis container size of 55 gallons;

Establishes an aboveground storage capacity threshold of greater than 1,320 gallons and removes the 660 gallon tank threshold;

Revises the trigger for submitting information on spills at SPCC-regulated facilities to EPA. Facilities are now required to submit revised SPCC plans after having 2 discharges (over 42 gallons) each in any 12-month period, or a single spill over 1,000 gallons;

Allows deviations from most rule provisions (with the exception of secondary containment requirements) when equivalent environmental protection is provided;

Provides for a flexible plan format, but requires a cross-reference showing that all regulatory requirements are met; and

Clarifies rule applicability to the storage and operational use of oil.

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The SPCC Regulation brochure is a guide for facility owners or operators to oil pollution prevention. For more information, see http://www.epa.gov/oilspill/spccguid.htm#brochure

Update on Regulatory Requirements

EPA Lengthens Compliance Date Extension for Amended Oil Spill Rule

February 17, 2006 Federal Register notice 71 FR 8462 (PDF, 6 pp. 127 KB, about PDF)

EPA published a final rule amending the Spill Prevention, Control, and Countermeasure (SPCC) Rule in the Federal Register on February 17, 2006. This action extends the SPCC compliance dates in §112.3(a), (b), and (c) for all facilities until October 31, 2007.
Under the new §112.3(a), a facility that was in operation on or before August 16, 2002 must make any necessary amendments to its SPCC Plan, and implement that Plan, on or before October 31, 2007. Under the new §112.3(b), a facility that came into operation after August 16, 2002 must also prepare and implement an SPCC Plan on or before October 31, 2007. Finally, under the new §112.3(c), a mobile facility must prepare or amend and implement an SPCC Plan on or before October 31, 2007.